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FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			BRANDENBURG, WILLIAM A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/676,369	Applicant(s) AGARWAL ET AL.	
	Examiner WILLIAM A. BRANDENBURG	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-13,33-37 and 49-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13,33-37 and 49-53 is/are rejected.
- 7) ☒ Claim(s) 33 and 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/25/2011</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/01/2011 has been entered.

Response to Amendment

2. The following is a Non-Final Office Action in response to communications received on 06/01/2011 for Request for Continued Examination (RCE). Claims 1-8, 14-32 and 38-48 have been cancelled. Claims 9-13, 33-37 and 49 have been amended. Claims 50-53 have been added. Therefore, claims 9-13, 33-37 and 49-53 are pending and addressed below.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 03/25/2011 was filed after the mailing date of the Final Office Action on 03/03/2011. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

4. The amendment filed on 06/01/2011, has corrected the claim objections identified in the Office Action dated 03/03/2011. Thus, the Examiner hereby withdraws the claim objections of claims 40 and 49 that were raised in the Office Action dated 03/03/2011.

5. Claims 33 and 49 are objected to because of the following informalities:

Claim 33 recites "An apparatus comprising...a computer-readable medium configured to store instructions that are executable..." (*emphasis added*) The Examiner notes that the claimed operations intended to be performed by the stored instructions are considered optional, as the current claim

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language does not require any actual "execution" of the instructions stored in the medium. As such, the Examiner recommends the Applicant amend the claim language to more positively recite the execution of the stored instructions.

Similar analysis can be applied to claim 49.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12-13, 36-37 and 52-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 12 recites the limitation "local time of interest ad performance information" in the body of the claim. There is insufficient antecedent basis for this limitation in the claim. It is apparent that the recitations of "local time of

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interest" which could provide the antecedent basis support have been removed by the Applicant as part of the claim amendments to parent claim 9.

Similar analysis can be applied to claims 36 and 52.

Claim 37 recites the limitation "the method" in the preamble of the claim. There is insufficient antecedent basis for this limitation in the claim.

Similar analysis can be applied to claim 53.

8. Claim 13 recites "determining, at least partly based on the second price for the first advertisement, a second score for the first advertisement, wherein the first score is higher than the second score...and selecting, at least partly based on the second score, a second advertisement for display in the second time zone, with the second advertisement being different from the first advertisement." (*emphasis added*) It is unclear to the Examiner that if the second score is based on the first advertisement, how can one select a different, second advertisement using the second score, particularly because the second advertisement is not associated with any score at all? As such, claim 13 is rejected for being indefinite. See MPEP 2173. For the purposes of examination, the Examiner will interpret this recitation to mean that in

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the event an ad scores poorly for a user in a particular time zone, a different, more relevant and applicable ad will be selected for display.

Similar analysis can be applied to claims 37 and 53.

9. Claim 37 recites "The apparatus of claim 33...wherein the method comprises..." It is unclear to the Examiner how a method can be included in an "apparatus" claim and cautions the Applicant on the apparent mixing of statutory categories. As such, claim 37 is rejected for being indefinite. See MPEP 2173. For the purposes of examination, the Examiner will interpret this claim wholly as an "apparatus" claim in accordance with the preamble and preceding parent claim 33.

Claim 53 recites "The computer-readable medium of claim 49...wherein the method comprises..." It is unclear to the Examiner how a method can be included in a "computer-readable medium" claim and cautions the Applicant on the apparent mixing of statutory categories. As such, claim 53 is rejected for being indefinite. See MPEP 2173. For the purposes of examination, the Examiner will interpret this claim wholly as a "computer-readable medium" claim in accordance with the preamble and preceding parent claim 49.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 9-13, 33-37 and 49-53 are rejected under 35 U.S.C. 103(a) as being obvious over Yeh et al. (US 2005/0050097 A1) (hereinafter Yeh).**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed

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in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(1)(1) and § 706.02(1)(2).

11. Please note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *e.g.* *In re Collier*, 158 USPQ 266, 267 (CCPA 1968) (where the court interpreted the claimed phrase "a connector member for engaging shield means" and held that the shield means was not a positive element of the claim since "[t]here is no positive inclusion of 'shield means' in what is apparently intended to

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be a claim to structure consisting of a combination of elements."

As a courtesy, the Examiner has analyzed the claim language and phrasing as indicated by the bolded and italicized sections or words below, and determined that the phrasing following the bolded and italicized word(s) is not required due to the terminology being intended user or expected results, in conformity with MPEP § 2111.04.

12. Applicant(s) are reminded that optional or conditional elements do not narrow the claims because they can always be omitted. See e.g. MPEP §2106 II C: "Language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

"As a matter of linguistic precision, optional elements do not narrow the claim because they can always be omitted." *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) (where the Federal Circuit affirmed the Board's claim construction of "further including that said wall may be smooth, corrugated, or profiled with increased dimensional proportions as pipe size is increased" since "this additional

content did not narrow the scope of the claim because these limitations are stated in the permissive form 'may.'").

As a courtesy, the Examiner has analyzed the claim language and phrasing as indicated by the bolded and underlined sections or words below, and determined that the phrasing following the bolded and underlined word(s) is not required due to the terminology being optional, in conformity with MPEP § 2111.04.

13. As per claim 9 (and similarly the apparatus of claim 33 comprising one or more processing devices and a computer-readable medium **configured to** store instructions that are **executable** by the one or more processing devices ([0108-111]) and the computer-readable medium of claim 49 **configured to** store instructions that are **executable** by the one or more processing devices ([0108-111])), Yeh discloses a method performed by one or more processing devices, comprising:

receiving a request ([0036], [0042], [0060], request from ad consumer yielding request information) and information indicative of a local time in a time zone from which the request was sent ([0042-44], [0048-51], [0060-67], [0069], [0080-81], geolocation information including regions (e.g. Pacific coast, Northeast, etc.) captured via various methods

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including ISP mapping and used to select and score targeted ads) (The Examiner understands due to the capturing of geolocation information and using time constraints for serving targeted ads, information indicative of a local time in a time zone from which the request was sent has been received. As such, the limitation is satisfied as currently written.);

determining, at least partly based on the price for the advertisement, a score for the advertisement ([0060-64], [0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance.).

Yeh does not explicitly disclose

accessing, in response to the request, a mapping of (i) one or more time ranges that are independent of the time zone, to (ii) one or more prices to be paid by an advertiser for a display of an advertisement;

determining, in the mapping, a time range that comprises the local time; and

identifying, based on the time range, a price for the advertisement.

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However, Yeh does teach advertisements are targeted to users according to geolocation information in accordance with location-dependent price information ([0021]). Geolocation information includes information specifying one or more countries, one or more (inter-country) regions, one of more states, etc. Serving parameters used as serving constraints include geolocation information, time of day served, time of week served, time of year served, etc, as well as only serving an ad on weekdays or to users in a certain geolocation ([0048-51]). Advertisements are selected and then scored in accordance with geolocation information, geolocation price information and geolocation performance information. Geolocation targeting also considers time/date/season targeting information. By using geolocation information, Yeh can serve certain ads with some preference over other ads, as these preferential ads are more useful to the end user ([0060-95]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Yeh to include accessing a mapping of one or more time ranges that are independent of the time zone to one or more prices to be paid, determining in the mapping a time range that comprises the

local time and identifying based on the time range a price for the advertisement. The rationale for this inclusion is that Yeh already teaches using geolocation information and prices set by advertisers specific to said geolocation information to select and score ads for delivery to targeted users. The Examiner understands that it is reasonable to construe this geolocation information includes time zone information, particularly because the geolocation information specifies inter-country regions commonly understood to be in different time zones. Furthermore, it would have been obvious for Yeh to perform similar operations and implement the claimed usage of time ranges independent of time zones, as in accordance with a KSR "obvious to try" rationale, these are among a limited number of predictable types of serving constraints commonly used for targeting user-specific ads. Moreover, common sense dictates that as location aids in determining relevancy of ads, so too does time. This is particularly reasonable, as Yeh already uses time as a serving constraint. As such, it would have been obvious for Yeh to implement the claimed limitations as such.

14. As per claim 10 (and similarly the apparatus of claim 34 and the computer-readable medium of claim 50), Yeh discloses

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the method of claim 9 (as rejected above). Yeh further discloses

wherein the local time comprises at least one of (a) at least one local time-of-day, (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range, (f) at least one local day-of-week range, and (g) at least one local season ([0042-44], [0048-51], [0060-67], [0069], [0080-81], geolocation information including regions (e.g. Pacific coast, Northeast, etc.) captured via various methods including ISP mapping and used to select and score targeted ads) (The Examiner understands due to the capturing of geolocation information and using time constraints for serving targeted ads, information indicative of a local time in a time zone from which the request was sent has been received. As such, the limitation is satisfied as currently written.).

15. As per claim 11 (and similarly the apparatus of claim 35 and the computer-readable medium of claim 51), Yeh discloses the method of claim 9 (as rejected above). Yeh further discloses

wherein the act of determining the score further comprises using at least ad performance information ([0019], [0060-64],

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[0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance.).

16. As per claim 12 (and similarly the apparatus of claim 36 and the computer-readable medium of claim 52), Yeh discloses the method of claim 9 (as rejected above). Yeh further discloses

wherein the act of determining the score further comprises using at least local time of interest ad performance information ([0019], [0060-64], [0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance.).

17. As per claim 13 (and similarly the apparatus of claim 37 and the computer-readable medium of claim 53), Yeh discloses the method of claim 9 (as rejected above). Yeh further discloses

wherein the local time comprises a first local time ([0042-44], [0048-51], [0060-67], [0069], [0080-81], geolocation information including regions (e.g. Pacific coast, Northeast, etc.) captured via various methods including ISP mapping and used to select and score targeted ads), the time zone

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comprises a first time zone ([0042-44], [0048-51], [0060-67], [0069], [0080-81], geolocation information including regions (e.g. Pacific coast, Northeast, etc.) captured via various methods including ISP mapping and used to select and score targeted ads), the request comprises a first request ([0036], [0042], [0060], [0080-95], request from ad consumer (e.g. consumer in San Diego on West Coast) yielding request information), the price comprises a first price ([0018], [0060-61], [0070-95], price information such as max price bid), the score comprises a first score ([0060-64], [0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance.), the advertisement comprises a first advertisement ([0042], [0050-51], [0084-95], ads selected and scored for targeted user (e.g. user located in San Diego)) (The Examiner understands due to the capturing of geolocation information and using time constraints for serving targeted ads, information indicative of a local time in a time zone from which the request was sent has been received. As such, the limitation is satisfied as currently written.) and wherein the method further comprises:

receiving a second request ([0036], [0042], [0060], request from ad consumer (e.g. consumer in Florida on East Coast time

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zone) yielding request information) and information indicative of a second local time in a second time zone from which the second request was sent ([0042-44], [0048-51], [0060-67], [0069], [0097-100], geolocation information including regions (e.g. Pacific coast, Northeast, etc.) captured via various methods including ISP mapping and used to select and score targeted ads) (The Examiner understands due to the capturing of geolocation information and using time constraints for serving targeted ads, information indicative of a local time in a time zone from which the request was sent has been received. As such, the limitation is satisfied as currently written.), wherein the first time zone differs from the second time zone ([0080-95], [0097-100], two ad consumers on different coasts (i.e. different time zones)), and wherein the first local time and the second local time comprise a same time when the second local time is converted to a time in the first time zone ([0080-95], [0097-100], two ad consumers on different coasts (i.e. different time zones)) (The Examiner notes that there is no actual conversion of time required by the claim from the first time zone to the second time zone. Rather, this limitation is simply understood by the Examiner as an inherent quality of time when considering different time zones (e.g. 9:00 am on the West Coast is 12:00 noon on the

East Coast, thus the times in two time zones are the same). As such, this limitation has been satisfied by Yeh as currently written.);

determining, at least partly based on the second price for the first advertisement, a second score for the first advertisement ([0060-64], [0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance, multiple prices set by advertiser for multiple geolocations for a single advertisement), wherein the first score is higher than the second score ([0070-73], different scores for the same advertisement based on different prices set by advertisers);

selecting, at least partly based on the first score, the first advertisement for display in the first time zone ([0060-64], [0070-103], ad scoring operations according to both price and performance including that of geolocation price and geolocation performance and ad is delivered to targeted user); and

selecting, at least partly based on the second score, a second advertisement for display in the second time zone, with the second advertisement being different from the first advertisement ([0060-95], ad scoring operations of multiple ads (e.g. ad A and ad B) according to both price and

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performance including that of geolocation price and geolocation performance.).

Yeh does not explicitly disclose

wherein the time range comprises a first time range, and

wherein the method further comprises:

determining, in the mapping, a second time range that comprises the second local time; and

identifying, based on the second time range, a second price for the first advertisement.

However, Yeh does teach advertisements are targeted to users according to geolocation information in accordance with location-dependent price information ([0021]). Geolocation information includes information specifying one or more countries, one or more (inter-country) regions, one of more states, etc. Serving parameters used as serving constraints include geolocation information, time of day served, time of week served, time of year served, etc, as well as only serving an ad on weekdays or to users in a certain geolocation ([0048-51]). Advertisements are selected and then scored in accordance with geolocation information, geolocation price information and geolocation performance information.

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Geolocation targeting also considers time/date/season targeting information. By using geolocation information, Yeh can serve certain ads with some preference over other ads, as these preferential ads are more useful to the end user ([0060-95]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Yeh to include the use of time ranges, determining in the mapping a second time range that comprises the second local time and identifying based on the second time range a second price for the first advertisement. The rationale for this inclusion is that Yeh already teaches using geolocation information and prices set by advertisers specific to said geolocation information to select and score ads for delivery to targeted users. The Examiner understands that it is reasonable to construe this geolocation information includes time zone information, particularly because the geolocation information specifies inter-country regions commonly understood to be in different time zones. Furthermore, it would have been obvious for Yeh to perform similar operations and implement the claimed usage of time ranges, as in accordance with a KSR "obvious to try" rationale, these are among a limited number of predictable

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types of serving constraints commonly used for targeting user-specific ads. Moreover, common sense dictates that as location aids in determining relevancy of ads, so too does time. This is particularly reasonable, as Yeh already uses time as a serving constraint. As such, it would have been obvious for Yeh to implement the claimed limitations as such.

Response to Arguments

18. Applicant's arguments with respect to claims 9-13, 33-37 and 49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WILLIAM A BRANDENBURG/
Examiner, Art Unit 3622